



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 6, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Jose Vega**
Tax Registry No. 898701
Police Service Area 9
Disciplinary Case No. 2012-7603

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on February 20, 2013 and was charged with the following:

DISCIPLINARY CASE NO. 2012-7603

1. Said Lieutenant Jose Vega, while assigned to the 72nd Precinct Detective Squad, on or about October 6, 2011, November 16, 2011, January 24, 2012, February 1, 2012, and February 10, 2012, was absent from said assignment without permission or police necessity. *(As amended)*

P.G. 203-05, Page 1, Paragraph 2

**PERFORMANCE ON DUTY
GENERAL REGULATIONS**

2. Said Lieutenant Jose Vega, while assigned to the 72nd Precinct Detective Squad, on or about and between September 7, 2011 through February 22, 2012, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Lieutenant made false entries in Department records when said Lieutenant indicated on overtime slips that he performed work on specific cases which was not actually performed. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

**PROHIBITED CONDUCT
GENERAL REGULATIONS**

3. Said Lieutenant Jose Vega, while assigned to the 72nd Precinct Detective Squad, on eleven (11) occasions on or about and between the dates indicated in Specification #2, while on duty, failed to make entries in his Department issued memo book relative to said Lieutenant's location, movements and vehicle usage.

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS

DISCIPLINARY CASE #2012-7603

LIEUTENANT JOSE VEGA

In a Memorandum dated October 18, 2013, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent Guilty in Part of Specification Nos. 1 and 2, and Guilty of Specification No. 3, in Disciplinary Case No. 2012-7603. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Lieutenant Vega's misconduct warrants the forfeiture of sixty (60) vacation days and one (1) year dismissal probation, as a disciplinary penalty.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

October 18, 2013

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Jose Vega
Tax Registry No. 898701
Police Service Area 9
Disciplinary Case No. 2012-7603

The above-named member of the Department appeared before me on February 20, 2013 and May 7, 2013, charged with the following:

1. Said Lieutenant Jose Vega, while assigned to the 72nd Precinct Detective Squad, on or about October 6, 2011, November 16, 2011, January 24, 2012, February 1, 2012, and February 10, 2012, was absent from said assignment without permission or police necessity. *(As amended)*

P.G. 203-05, Page 1, Paragraph 2 – PERFORMANCE ON DUTY GENERAL REGULATIONS

2. Said Lieutenant Jose Vega, while assigned to the 72nd Precinct Detective Squad, on or about and between September 7, 2011 through February 22, 2012, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Lieutenant made false entries in Department records when said Lieutenant indicated on overtime slips that he performed work on specific cases which was not actually performed. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT GENERAL REGULATIONS

3. Said Lieutenant Jose Vega, while assigned to the 72nd Precinct Detective Squad, on eleven (11) occasions on or about and between the dates indicated in Specification # 2, while on duty, failed to make entries in his Department issued memo book relative to said Lieutenant's location, movements and vehicle usage.

P.G. 212-08, Page 1, Paragraph 1 – ACTIVITY LOGS

COURTESY • PROFESSIONALISM • RESPECT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

With respect to Specification No. 1, Respondent is found Guilty in Part with regard to three dates charged and Not Guilty in Part with regard to two dates charged; with respect to Specification No. 2, Respondent is found Guilty in Part with regard to 8 dates charged and Not Guilty in Part with regard to 19 dates charged; and with respect to Specification No. 3, Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant David Decker, Sergeant Lisa Connor, and Captain John Sanford as witnesses.

Sergeant David Decker

Decker, a 14-and-a half-year member of the Department, is currently assigned to the 71 Precinct Detective Squad. While assigned to the Chief of Detectives Investigations Unit in March 2012, he became involved in an investigation of Respondent after an inspection conducted by another sergeant in the Investigations Unit revealed discrepancies

between Respondent's Movement Log and Vehicle Utilization Log.¹ As part of his investigation, Decker reviewed the records from Respondent's Department-issued cell phone. Decker explained that he "obtained the time of [phone] usage and the cell phone tower location, where the cell phone hit the nearest tower." He compared the telephone records against Respondent's Movement Log and sign-in times in the Command Log. He subsequently prepared an Investigating Officer's Report that showed dates that Respondent engaged in a "misuse of overtime" between September 2011 and February 2012 [Department's Exhibit (DX) 1]. He also prepared a time records analysis spreadsheet (DX 1A), which "covered all the time entries and access to computers, sign in and sign out."

The Command Log and CityTime (timekeeping) records showed that Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on September 7, 2011. In addition, he submitted a slip for three hours of overtime that day, signing in the Command Log at 8:00 a.m. and working until 7:35 p.m. Decker was able to determine, however, that Respondent was not present in the command at 8:38 a.m. He learned this from a Department cell phone invoice (DX 3) showing that Respondent's cell phone "hit in Elmhurst [Queens]." Respondent indicated on his overtime slip (DX 2) that the basis for the overtime was Pattern 105, which referred to a robbery case within the precinct. Upon review of the Electronic Case Management System (ECMS), however, Decker was able to determine that Respondent did not access the electronic file for that case until 6:59 p.m. and, thus, did not work on the case at all during his pre-tour overtime. Decker explained that since 2011, detectives maintain electronic case files on the ECMS instead of hard case files. It was

¹ Decker still worked for the Chief of Detectives Investigations Unit on the first day that he testified (February 20, 2013). By the time he was recalled to the witness stand on May 7, 2013, he had been transferred to the 71 Precinct Detective Squad.

through a reverse audit in ECMS that Decker was able to see exactly when Respondent accessed specific cases.

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on September 16, 2011. In addition, he submitted a slip for two hours of overtime, starting work at 8:00 a.m. and ending at 6:35 p.m. Decker was able to determine through a cell phone invoice, however, that Respondent was actually in Maspeth at 8:04 a.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 1698, Decker determined that Respondent accessed the file for that case while on straight time at 5:11 p.m. [DX 4 and 4A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on October 6, 2011. In addition, he submitted a slip for overtime, starting work at 8:00 a.m. and ending at 6:35 p.m. Decker was able to determine through a cell phone invoice, however, that Respondent's cell phone had a "tower hit" in Rockaway Park, Queens at 12:20 p.m. When Decker asked about this discrepancy during an interview, Respondent could not provide an explanation. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 1489, Decker determined that Respondent accessed the file for that case while on straight time at 5:35 p.m. [DX 5 and 5A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on October 7, 2011. In addition, he submitted a slip for three hours of overtime, starting work at 8:00 a.m. and ending at 7:35 p.m. Decker was able to determine through a cell phone invoice, however, that Respondent's cell phone was located in Elmhurst at 8:23 a.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Pattern 74, Decker

determined that Respondent did not access the file for that case until 9:20 a.m. [DX 6 and 6A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on October 17, 2011. In addition, he submitted a slip for two-and-a-half hours of overtime, starting work at 8:00 a.m. and ending at 7:05 p.m. Decker was able to determine through a cell phone invoice, however, that Respondent's cell phone had a "tower hit" in Rego Park, Queens at 7:59 a.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 1945, Decker determined that Respondent accessed the file for that case while on straight time at 5:15 p.m. [DX 7 and 7A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on October 18, 2011. In addition, he submitted a slip for two-and-a-half hours of overtime, starting work at 8:00 a.m. and ending at 7:05 p.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 1856, Decker determined that Respondent did not access anything on the computer that day and that Case 1856 had been closed 13 days earlier. According to Respondent's Activity Log and the Movement Log, Respondent in actuality performed his pre-tour overtime (from 8:00 a.m. until 9:30 a.m.) at the Fleet Services Division in Woodside and post-tour overtime (from 6:05 p.m. until 7:05 p.m.) at Detective Borough Brooklyn. About Respondent going to the Fleet Services Division, Decker explained that it was an administrative function for which overtime should not have been granted. [DX 8 and 8A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on October 25, 2011. In addition, he submitted a slip for overtime, starting work at 8:00 a.m. and ending at 6:35

p.m. He again indicated on his overtime slip that the basis for the overtime was Case 1856, but this time Decker determined that Respondent did in fact access that case while on overtime at 6:15 p.m.

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on November 1, 2011. In addition, he submitted a slip for two-and-a-half hours of overtime, starting work at 8:00 a.m. and ending at 7:05 p.m. Decker was able to determine through a cell phone invoice, however, that Respondent was actually in Rego Park at 8:48 a.m. When Decker asked about this discrepancy during an interview, Respondent could not provide an explanation. Respondent did tell Decker something about having "been called in on a missing female and was ordered in by his Commanding Officer. On this date . . . he was coming in on the same case, but . . . had not received authorization." Although Respondent indicated on his overtime slip that the basis for the overtime was Case 2054, Decker determined that Respondent accessed the file for that case while on straight time at 11:46 a.m. [DX 9 and 9A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on November 2, 2011. In addition, he submitted a slip for overtime, starting work at 8:00 a.m. and ending at 7:05 p.m. He indicated on his overtime slip that the basis for the overtime was Case 2070, but Decker determined that the complaint for that case was not even reported until 11:30 a.m. that day.

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on November 3, 2011. In addition, he submitted a slip for three hours of overtime, starting work at 8:00 a.m. and ending at 7:35 p.m. Decker was able to determine through a cell phone invoice, however, that Respondent was located in [REDACTED] at 7:56 a.m. Respondent

resides in [REDACTED]. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 2075, Decker determined that Respondent accessed the file for that case while on straight time at 4:25 p.m. [DX 10 and 10A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on November 16, 2011. In addition, he submitted a slip for overtime, starting work at 8:00 a.m. and ending at 7:35 p.m. Decker was able to determine through a cell phone invoice, that Respondent was in Forest Hills at 2:05 p.m. and Rego Park at 2:15 p.m. that day. Other records indicated that Respondent was en route to the vicinity of the 78 Precinct at that time, and Respondent could not explain this discrepancy when asked about it. [DX 11 and 11A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on December 2, 2011. In addition, he submitted a slip for five hours of overtime, starting work at 6:00 a.m. and ending at 7:35 p.m. Cell phone calls at 6:16 and 6:17 a.m., however, indicated that Respondent was in [REDACTED] at those times. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 2213, Decker determined that that case was not accessed during Respondent's overtime period. In an official Department interview, Respondent stated that he had Compstat on that day and that he must have made a mistake on his overtime slip when he entered the reason for the overtime. According to Decker, Compstat is an administrative function and overtime is not authorized for it. [DX 12 and 12A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on December 8, 2011. In addition, he submitted a slip for three hours of overtime, starting work at 8:00

a.m. and ending at 7:35 p.m. Decker was able to determine through a cell phone invoice, however, that Respondent made a call from [REDACTED] at 7:23 p.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 2189, Decker determined that that case was not accessed. The detective who was assigned to that case worked a 10:00 a.m. by 6:00 p.m. tour that day. [DX 13 and 13A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on December 14, 2011. In addition, he submitted a slip for overtime, starting work at 8:00 a.m. and ending at 7:35 p.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 2259, Decker determined that that case was not accessed. The detective who was assigned to that case worked from 10:00 a.m. that day until 1:00 a.m. the following day.

Respondent worked his scheduled 9:30 a.m. by 6:05 p.m. tour on December 15, 2011. In addition, he submitted a slip for overtime, starting work at 8:00 a.m. and ending at 7:35 p.m. Decker was able to determine through a cell phone invoice, however, that Respondent made a call from Elmhurst at 8:01 a.m. Respondent indicated on his overtime slip that the basis for the overtime was Pattern 114, and a reverse audit in ECMS confirmed that Respondent did in fact access that case file at 8:56 a.m. [DX 14 and 14A are the overtime slip and cell phone invoice relating to that day.]

Respondent worked his scheduled 10:30 a.m. by 7:05 p.m. tour on January 3, 2012. In addition, he submitted a slip for two-and-a-half hours of overtime, starting work at 8:00 a.m. Decker was able to determine through a cell phone invoice, however, that Respondent made a call from Long Island at 8:06 a.m. Although Respondent indicated on

his overtime slip that the basis for the overtime was Case 2217, Decker determined that that case was not accessed. Decker did not know if the detective who was assigned to that case was present in the command while Respondent was on overtime. [DX 15 and 15A are the overtime slip and cell phone invoice relating to that day.]

Respondent again worked his scheduled 10:30 a.m. by 7:05 p.m. tour on January 4, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 2432, Decker determined that Respondent accessed the file for that case while on straight time at 6:22 p.m. The detective who was assigned to that case worked from 10:27 a.m. until 7:00 p.m. that day.

Respondent again worked his scheduled 10:30 a.m. by 7:05 p.m. tour on January 6, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 35, Decker determined that the complaint for that case was not even reported until 12:00 p.m. that day. When Decker asked about this discrepancy during an interview, Respondent could not provide an explanation.

Respondent again worked his scheduled 10:30 a.m. by 7:05 p.m. tour on January 13, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime (starting at 8:00 a.m.). Decker was able to determine through a cell phone invoice, however, that Respondent was in Maspeth at 8:10 a.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 27, Decker determined that that case was not accessed. When Decker asked about this discrepancy during an interview, Respondent

could not provide an explanation. [DX 16 and 16A are the overtime slip and cell phone invoice relating to that day.]

Respondent again worked his scheduled 10:30 a.m. by 7:05 p.m. tour on January 20, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 2367, Decker determined that Respondent accessed the file for that case while on straight time at 5:41 p.m. The detective who was assigned to that case was off from work that day.

Respondent again worked his scheduled 10:30 a.m. by 7:05 p.m. tour on January 24, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime. Decker was able to determine through a cell phone invoice that Respondent was in various locations in Queens, Manhattan, and the Bronx between 11:34 a.m. and 12:42 p.m. When Decker asked about this during an interview, Respondent explained that he took a Department vehicle to [REDACTED] because his wife was going through a high-risk pregnancy. Respondent also told Decker that he did not speak with a supervisor for approval or submit a Leave of Absence Report (UF-28) before leaving the command. Respondent did not note the trip in the Movement Log or his Activity Log. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 144, Decker determined that Respondent accessed the file for that case while on straight time at 5:54 p.m. The detective who was assigned to that case started work at 1:00 p.m. that day. [DX 17 and 17A are the overtime slip and cell phone invoice relating to that day.]

Respondent again worked his scheduled 10:30 a.m. by 7:05 p.m. tour on January 27, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 140,

Decker determined that Respondent accessed the file for that case while on straight time at 6:25 p.m. The detective who was assigned to that case started work at 11:30 a.m. that day. A review of the Vehicle Utilization Log (DX 18) revealed that Respondent left his command that day to be in the vicinity of the 68 Precinct at 1:00 p.m. and returned at 2:35 p.m. Respondent did not note the trip in the Movement Log or his Activity Log. During the course of his investigation, Decker found no reason why Respondent had to leave the command.

Respondent again worked his scheduled 10:30 a.m. by 7:05 p.m. tour on February 1, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime. Decker was able to determine through a cell phone invoice, however, that Respondent made several calls from Queens and the Bronx between 9:38 a.m. and 10:25 a.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 145, Decker determined that that case was not accessed. The detective who was assigned to that case was off from work that day. A review of the Vehicle Utilization Log (DX 20) revealed that Respondent left his command to go to 61 Street and 5 Avenue at 9:00 a.m. and returned at 4:30 p.m.² Respondent did not note the trip in the Movement Log or his Activity Log. When Decker asked in an interview why Respondent left the confines of his command that day, Respondent could not provide an explanation. [DX 19 and 19A are the overtime slip and cell phone invoice relating to that day.]

Respondent again worked his scheduled 10:30 a.m. by 7:05 p.m. tour on February 2, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime (starting at 8:00

² The time that the vehicle was returned is not visible on the copy of the Vehicle Utilization Log (DX 20) because of the way the page was copied. Decker stated that in his records, the original copy of the Log indicated 4:30 p.m. as the return time. In DX 20, Respondent noted that the "hours in use" for the vehicle was "2:30" on that date.

a.m.). Decker was able to determine through a cell phone invoice, however, that Respondent made a call from Rego Park at 7:56 a.m. A review of the Vehicle Utilization Log (previously entered into evidence as DX 20) revealed that Respondent left his command to go to the vicinity of the 68 Precinct at 2:00 p.m. and returned at 4:30 p.m. Respondent did not note the trip in the Movement Log or his Activity Log. When Decker asked in an interview why Respondent left the confines of his command that day, Respondent could not provide an explanation. [DX 21 is the cell phone invoice relating to that day.]

Respondent worked his scheduled 10:30 a.m. by 7:05 p.m. tour on February 9, 2012. In addition, he submitted a slip for overtime, starting work at 7:30 a.m. and ending at 8:05 p.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 246, Decker determined that that case was not accessed. The detective who was assigned to that case started work at 12:00 p.m. that day.

Respondent worked his scheduled 10:30 a.m. by 7:05 p.m. tour on February 10, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime. Decker was able to determine through a cell phone invoice that Respondent was in various locations in Queens, Manhattan, and the Bronx between 11:40 a.m. and 12:58 p.m. When Decker asked about this during an interview, Respondent explained that he might have gone home again because of his wife's high-risk pregnancy. Respondent also told Decker that he did not receive supervisory authorization to leave the command. Respondent did not note the trip in the Movement Log, his Activity Log, or the Vehicle Utilization Log. Although Respondent again indicated on his overtime slip that the basis for the overtime was Case 246, Decker determined that Respondent accessed the file for that case while on straight

time at 5:47 p.m. [DX 22, 22A and B are the overtime slip and cell phone invoices relating to that day.]

Respondent worked his scheduled 10:30 a.m. by 7:05 p.m. tour on February 15, 2012. In addition, he submitted a slip for four hours of overtime, starting work at 8:00 a.m. and ending at 8:35 p.m. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 244, Decker determined that that case was not accessed. The detective who was assigned to that case started work at 1:34 p.m. that day.

Respondent worked his scheduled 10:30 a.m. by 7:05 p.m. tour on February 22, 2012 and submitted a slip for two-and-a-half hours of pre-tour overtime. Although Respondent indicated on his overtime slip that the basis for the overtime was Case 299, Decker determined that that case was not accessed, though the detective who was assigned to that case started work at 8:00 a.m. (during Respondent's overtime period). When asked in an interview, Respondent told Decker that he could not recall what duties he performed on overtime that day. Nor could Respondent recall what duties he performed on overtime on any of the days that Decker found discrepancies. Decker explained that as Commanding Officer of the 72 Precinct Detective Squad, Respondent "is to supervise, he answers for the cases he supervises, the men in general. His duties include some clerical work, case management, supervisory management." Decker continued, "the lieutenant would certainly oversee cases that were of extreme importance, shootings, robberies, I am sure he would look into those diligently." Had Respondent printed paper copies of case files, it would have been noted in ECMS.

On cross-examination, Decker agreed that he has no personal experience in what it is that a supervisor does in a detective squad. As the Commanding Officer of the squad,

Respondent had numerous responsibilities, including clerical and administrative duties. Respondent was also responsible for every single case that the squad was investigating and would ultimately be held accountable for anything that went wrong on a serious case. Respondent's immediate supervisor during the dates in question was zone commander Captain John Sanford. If Sanford had an issue with the 72 Precinct Detective Squad, he would have turned to Respondent to address the matter. Sanford oversaw three separate detective squads, but his office was located in the 72 Precinct right next to Respondent's office. Sanford was the person who authorized Respondent's overtime. During an official Department interview, Sanford indicated to Decker that he had a pretty strict protocol in place for authorizing overtime by his lieutenants. A lieutenant could not perform any overtime without getting Sanford's authorization.

Verizon provides the service for Department cell phones. Decker never reached out directly to Verizon in order to get records with regard to Respondent's phone. Decker agreed that to determine where a cell phone was located at a particular time, it was possible to subpoena the phone company for "cell site records." Because he was dealing with a Department phone in this investigation, however, all he did in this case was obtain from the Communications Division invoices that Verizon had billed to the Department for Respondent's phone. Decker did not have any technical expertise in interpreting the invoices, but he consulted with Communications Division personnel on two occasions. He was assured that the information on the invoices concerning location of call origination was accurate. The Communications Division informed him that the information came from "hard cell towers . . . not bounced sites." He was also informed, though, that due to atmospheric conditions and satellite strength at the time of a given call, the closest cell

tower might not necessarily be the one to handle the call. Even wind speed at the time of a call could affect which tower handled it. [Respondent's Exhibits (RX) A and B are the front pages of monthly invoices for Respondent's phone, showing that Decker used regular phone bills for his investigation.]

Respondent admitted to Decker in an interview that he drove to his home in [REDACTED] on February 10, 2012. Decker conceded that even though the invoice for that day showed calls as originating in Elmhurst and the Bronx, it did not mean that Respondent was actually in Elmhurst and the Bronx at the time of those calls. The locations given on the invoices provided a general geographic area of call origination location but did not always delineate which specific cell tower was utilized. Calls handled by cell towers in Brooklyn were listed as originating in "Brooklyn" without giving any specific neighborhood. Calls handled by towers in Queens, in contrast, were sometimes identified by neighborhood. Decker assumed that a call placed in the 72 Precinct would not be handled by a tower in Queens, but this assumption was not based on any sort of technical expertise.

Although it is a common investigative step to conduct personal surveillance in misuse of time cases, there was never any attempt to conduct surveillance of Respondent. Similarly, EZ Pass records have been obtained in other misuse of time cases but were not obtained in Respondent's case. Respondent could access various programs, other than ECMS, from his Department computer. ECMS, however, was the only program on the computer to have its history checked as part of the investigation. Decker did not check what time Respondent logged onto his computer in the mornings.

About the invoice indicating that Respondent made a call from Rockaway Park on October 6, 2011, Decker did not know if that referred to the neighborhood in Queens or the street in Brooklyn named Rockaway Parkway. Rockaway Parkway does not run through the 72 Precinct, and Decker explained that whenever a member of the service leaves his command he is required to document his trip in his Activity Log and Vehicle Utilization Log. Respondent could not explain his reason for leaving the command when interviewed by Decker, though the interview occurred several months after the dates in question.

Decker found no indication that anybody ever signed in for Respondent in the Command Log. Respondent signed in at 8:00 a.m. on September 16, 2011. Several members signed in below him, also at 8:00 a.m. Respondent indicated on his overtime slip that the basis for his overtime that day was an investigation of a “DOA.” Decker agreed that the investigation of a DOA can involve many different investigative steps that would not require a lieutenant to sign onto ECMS.

It was explained to Decker that the call origination on the cell phone invoices always referred to the location of Respondent’s cell phone. This was true even for incoming calls, such as the 8:23 a.m. call on October 7, 2011 and the 7:59 a.m. call on October 17, 2011.

The cell phone invoice for October 18, 2011 was consistent with Respondent’s Activity Log entry that he was at the Fleet Services Division in Queens while on overtime. Although Respondent was responsible for all of the Department vehicles assigned to his command, Decker reiterated that Department guidelines do not allow for overtime for administrative duties, such as servicing cars.

Decker acknowledged that a detective is permitted to print out hardcopies of his case folders, and a lieutenant can review these folders even when the detective assigned to a case is not present in the command. According to Decker, however, such a review would be “pointless” because there would be no record of it in ECMS. Decker did concede, though, that it was possible Respondent was doing work with regard to case work in the 72 Precinct Detective Squad on the dates in question.

On redirect examination, Decker explained that no surveillance was conducted on Respondent because his supervisors in the Investigations Unit believed that the cell phone records were “much more ironclad than physical observations.” Decker explained, “We had spoken with [the Communications Division]. They assured us that the towers were correct. That the times were correct. And it was felt that this hard evidence [was] better than just a visual observation of him coming and going. The length of misconduct had been long enough that it could be documented properly and presented.” When interviewed, Respondent acknowledged that the phone records were accurate on three occasions: twice when he left the command to see his wife, and once when he went to the Fleet Services Division. Sanford’s office was separated from the 72 Precinct Squad room by a doorway.

On recross-examination, Decker confirmed that Sanford and Respondent had offices on the same floor of the command. Although the two offices were within a hundred feet of each other, from his desk Sanford would not have been able to see Respondent coming and going. Sanford conducted inspections of the 72 Precinct Detective Squad Command Log.

Respondent drove to his residence in [REDACTED] on February 10, 2012 while on straight time. Even though the cell phone invoice indicated calls originating from the Bronx that day, Decker conceded that it was possible the calls hit a cell tower in the Bronx without Respondent actually being in the Bronx.

On redirect examination, Decker confirmed that his investigation resulted in a determination that Respondent was absent from his command without permission or police necessity, and that he did not work specifically the overtime that he requested or that if he did it was not on overtime.

Decker received the cell phone invoices from Sergeant Lisa Connor, the Integrity Control Officer of the Communications Division. Connor told Decker that heavy winds or water could disturb communications. Decker explained, “What would happen was, if I was on the water, say in Queens, and I made a phone call, it could bounce off the cell tower in Manhattan. The same as if I was in Brooklyn and near the water, I made a call from the 72 Precinct. It could bounce off a cell tower in Staten Island or New Jersey. But [Connor] was pretty clear it wouldn’t bounce within land items.”

Upon further questioning, Decker testified that Respondent signed in the Command Log in-person on all of the dates in question. ECMS indicates how long a case is accessed.

On continued recross-examination, Decker confirmed that there was no reason to believe that anybody other than Respondent signed in for Respondent in the Command Log. Decker explained, “We acknowledge that [Respondent] was there, but he didn’t do the work that he said he should have done.” Respondent signed in at 8:00 a.m. on November 1, 2011. Although a Detective Karolkowski and Sanford both signed the log immediately after Respondent, Decker did not know the exact time that they signed in

because their entries were illegible. Due to the 8:48 a.m. call from Rego Park, Respondent was found to have committed both abuse of overtime and misuse of overtime on that day. When asked how to reconcile the Command Log entries with the time of the phone call, Decker testified, "Everyone could have been late. Somebody could have saved him a line. There's possibilities that I can't account for."

Sergeant Lisa Connor

Connor, a 14-year member of the Department currently assigned to the Communications Division, works as the Integrity Control Officer of the Telecommunications Unit. In her capacity, she handles requests from investigatory units for Department cell phone records. She retrieves these records by "download[ing] whatever timeframe from Verizon and . . . print[ing] a duplicate copy of the bill." Connor explained that the term "origination" on these bills referred to the closest tower that the caller was able to connect to, and the term "destination" referred to the closest tower that the call recipient was able to connect to. Connor learned the definition of these terms from a Verizon representative. When asked if the "origination" tower might not actually reflect the physical location of the caller, Connor testified, "According to Verizon, there are certain elements that you have. Body of water can . . . interfere with the closest tower." The 72 Precinct is near the water. Connor continued, "According to Verizon, if you are standing near a body of water, it will hit the closest tower which could be anywhere. According to [a map of the 72 Precinct], Staten Island, Manhattan, New Jersey would be one of the closest towers." [DX 23 is a map of the precincts, showing that the 72 Precinct abuts Upper New York Bay.]

On cross-examination, Connor confirmed that the Department does not maintain cell phone towers or generate cell phone invoices. Her knowledge of what she has testified about is based solely on a phone conversation that she had with a Verizon representative. She does not have any personal expertise in these matters, and she has never testified as an expert with regard to interpreting cell phone bills or cell tower records. The invoices that Connor retrieved for this case she downloaded from the Verizon website; they are not cell site records. Connor assumed that Verizon had hundreds of cell towers in Brooklyn, and she did not know why no particular Brooklyn neighborhood was indicated on the invoices. Calls from Queens sometimes indicated specific neighborhoods.

Captain John Sanford

Sanford, an 18-year member of the Department, has been assigned to Detective Borough Brooklyn Zone 11 since December 2010. In 2011, his office was housed within the 72 Precinct. He and Respondent had offices on the opposite side of the stairwell. While seated in his office, Sanford was not able to see Respondent in the 72 Precinct Detective Squad room. Normally all case work was conducted on ECMS. Hardcopies were printed out only for extraordinary cases. When his subordinates performed overtime to work on a case, they would indicate the ECMS case number on their overtime slips.

On cross-examination, Sanford confirmed that there was no prohibition on printing out case files. Nor was there a mandate that a lieutenant be signed onto ECMS while on overtime. There would have been any number of programs on Respondent's Department computer, and as the squad commander Respondent had many responsibilities in addition to case supervision. In terms of case volume, the 72 Precinct was the busiest detective

squad in Sanford's zone. Sanford agreed that the 72 Precinct Detective Squad was very efficient.

On redirect examination, Sanford confirmed that in order to print a file it was necessary to be logged onto ECMS. In order to obtain a case number it was also necessary to log onto the system. It was Sanford's practice to have subordinates denote on their overtime slips what they were working on. It would have, therefore, been proper for Respondent to indicate on his slips the case numbers of all the cases he worked on and any other tasks that he conducted while on overtime.

On recross-examination, Sanford testified that he signed the Command Log at 8:00 a.m. on November 1, 2011. Sanford confirmed that Respondent's name was above his in the log that day, though he could not be certain that it was actually Respondent who made the entry. [RX C is a copy of the Command Log for that day.]

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 23-year member of the Department, has been on modified duty status since June 2012. He is currently assigned to Housing Bureau Viper 8. Prior to being modified, he served as Commanding Officer of the 72 Precinct Detective Squad for a year and a half. During that period, he received excellent evaluations. During the course of his career, he has been awarded ten medals for Excellent Police Duty, five medals for Meritorious Police Duty, and one Commendation.

While assigned as Commanding Officer of the 72 Precinct Detective Squad, Respondent had numerous duties and responsibilities. These included maintaining the Command Log, Movement Log, and Icard Log (a log of people wanted for various crimes); inspecting the Activity Logs of his subordinates and disciplining them when necessary; detecting crime patterns through the Real Time Crime Center; creating and adjusting roll calls; assigning detectives their cases; authorizing overtime; notifying detectives for court appearances and details; maintaining payroll records; reviewing complaints; talking with the Commanding Officer of the precinct; attending meetings with the Borough Chiefs and Department Chiefs; supervising arrests; managing a small budget; and acting as a Spanish translator.

About detecting crime patterns, Respondent explained that he tried to detect patterns occurring not just within the 72 Precinct, but also in neighboring commands and citywide. In addition, he reviewed closed cases for pattern-detection purposes. Between September 2011 and February 2012, he was working on six active patterns. He explained, "Four were really big patterns. Rape patterns . . . and grand larceny/robbery Pattern 114. . . . I was getting phone calls from my house. I was getting phone calls about this pattern and other cases within the City. Other crimes within the City that fit into this pattern."

Respondent worked a lot with Karolkowski on Pattern 114. Both of them kept pattern books at their desks. These books were not downloaded onto the computer.

The 72 Precinct Detective Squad was the busiest command in the zone and the fourth or fifth busiest in the borough with regard to case volume. The squad handled approximately 2,600 cases annually. The cases were divided among 15 detectives. Respondent did not immediately log onto ECMS upon arriving at work each day. He

explained, "What I like to do is to see what crimes happened the night before. So I logged into the complaint system. Which is the OMNI. I logged into that once I walked in to see if there was a listing for robbery that happened the night before. If it fit into one of our patterns. Or I called and they would ask me what is going on with this robbery." He continued, "I like to know before anybody called me up. My boss would call me constantly to find out about certain crimes that happened within the command or [the Deputy Commissioner of Public Information] or maybe a meeting. And I should know about it, because I'm the one that needs to answer it. So I would log onto the OMNI to see what crimes happened the night before."

Respondent regularly performed overtime during the period between September 2011 and February 2012 because he had so many tasks and responsibilities that it was impossible for him to complete them all within his regular tour of duty. Sanford was Respondent's immediate supervisor. Sanford at first had an office right next to Respondent's but later moved to another area on the same floor. It was necessary to confer with Sanford before performing overtime, and Sanford authorized all of the overtime slips that Respondent submitted. Unless Sanford was off from work, Respondent saw him numerous times throughout the day.

Respondent's regularly scheduled tour usually started at 9:30 a.m., and he would come in early to perform pre-tour overtime. Upon arriving he generally turned on his computer and looked at the complaints from the previous day, or he would speak to the precinct Commanding Officer downstairs or discuss with the desk officer certain crimes that occurred overnight. Once he logged onto his computer he had access to ECMS, OMNI, and numerous other applications. Other times he would close out logs in the Icard

system, which was done manually. He would also confer with detectives who were present in the command. There was no policy mandating that the Commanding Officer of a detective squad needed to be signed onto ECMS to perform overtime. As was common practice he noted case numbers on his overtime slips. He did not note on the slips every task that he performed, nor did he break up the tasks according to whether he performed them on overtime or straight time.

In addition to his administrative responsibilities, Respondent had to supervise the detectives and their investigations of cases. There were 13 detectives in his squad. Detective Wakefield, who handled domestic violence cases, printed many of her cases because she found it easier to conduct home visits and speak with victims with the case folders in front of her. Respondent was not aware of any rule that prohibited a detective from printing a copy of a case folder. When reviewing Wakefield's work, Respondent would pull the cases from her desk and have daily discussion with her. This did not require Respondent to be on the computer.

Detective Burchette also printed a lot of his cases because he handled identity theft cases, and he probably found it easier to deal with hardcopies, given the great number of subpoenas and correspondences from banks and phone companies that were part of his case folders. Similarly, Detective Lamoglia printed all of his cases because he was older and preferred to look at physical paper instead of the computer. Respondent testified that just because he was not logged onto ECMS it did not mean that he was not present in the command performing other tasks. While he conceded that his overtime slips sometimes did not accurately reflect the specific tasks that he performed, he explained:

Well, they don't reflect on that case that I said I put down, but I was physically there. It's like a police officer that gets eight hours of

overtime. He's standing in the corner. That is not documented anywhere. He gets eight hours overtime for a parade let's say. He puts on a parade. He doesn't specifically say on 42nd and 7th. He was just on the parade.

While on overtime Respondent also performed administrative work, such as maintaining the Icard log, signing into CityTime, and maintaining Department vehicles.

Respondent recalled two occasions (January 24 and February 10, 2012) when he left the command and went home to see his wife while on duty. His wife was pregnant, and the pregnancy was considered high-risk. He did not ask permission before leaving the command or submit a UF-28, and Respondent described this as a lapse in judgment. His wife was bed-ridden at the time, and he thought that he would serve the Department better if he just went "home real quick and c[a]me back instead of taking the whole day off." He admitted this misconduct when questioned by investigators.

Respondent did not recall what was happening on October 6, 2011. He did not recall a 12:20 p.m. phone call. At no point during his tour that day did he go to the Rockaways. Going to the Rockaways would have required him to cross a toll bridge. Respondent had a Department vehicle with an attached EZ Pass. There is a Rockaway Parkway that runs through the 69 and 79 Precincts but not the 72 Precinct. He did not go home that day while on duty.

Respondent did not recall November 16, 2011.

Respondent went to the Fleet Services Division on October 18, 2011. He reiterated that one of his tasks as Commanding Officer was to maintain the vehicles that were assigned to the squad. On that date, he signed in from the Fleet Services Division, calling the command and giving instruction to sign him in via an outside wire. He described this as "a practice used for 0800 at Fleet Services."

Respondent signed in at 8:00 a.m. on September 16, 2011. Three detectives signed in the Command Log on lines immediately below him, also for an 8:00 a.m. start time. Respondent confirmed that he has been involved in numerous investigations with regard to tracking cell phones and cell phone bills. According to Respondent, in order to determine the location of a suspect it is necessary to get a phone subpoena for cell-site tower records. He explained that these records, which are different from invoices, pinpoint which specific tower a call came from.

Respondent signed in at 8:00 a.m. on November 1, 2011. Sanford also signed in at 8:00 a.m., and according to Respondent he frequently ran into Sanford while signing in and out. Many people came to work early that day because the squad was handling a missing persons case involving a girl from Texas. The girl was ultimately found in Queens. Respondent most likely put that case number on his overtime slip. Respondent stated that because he was within the confines of the 72 Precinct at 8:48 a.m. that day, the call noted on the cell phone invoice at that time might have been an incoming call from Rego Park. He did not recognize the phone number. When asked why he did not log onto ECMS until 11:45 a.m., Respondent explained:

I wouldn't log onto the case, because I knew the missing I knew that case, because I was up the night before and I was into 1:00 in the morning in regards to that case. So I knew the steps that we were taking, and I believe we were getting a phone subpoena for the boy that she was with, with the missing girl.

Respondent continued, "So I didn't need to log into ECMS to know about the case and to instruct the detective to make sure they go out and do video canvases. Go to [the] bar she was supposedly at. So I didn't need to log onto E[CM]S at eight o'clock in the morning."

Respondent signed in at 8:00 a.m. on November 3, 2011. Sergeant Astras signed in the Command Log on the line immediately below him, also for an 8:00 a.m. start time. [RX D is a copy of the Command Log for that day.] According to Respondent, the 7:56 a.m. call noted on the cell phone invoice for that day was an incoming call from his wife originating from his home in [REDACTED]. Respondent worked on Case 2054 that day, but he accidentally noted on his overtime slip that he had worked on Case 2075. He explained that both of these cases were missing persons cases, but Case 2054 was the case of the girl from Texas. The girl had been found at that point, but Respondent still needed to close out the case. When asked why he did not log onto ECMS until 4:25 p.m., he explained that the missing girl's family spoke Spanish and he was frequently doing translation work during the course of the investigation, speaking on the phone with the girl's father or grandmother. Furthermore, there was no need for him to log onto the computer because he "knew the case like the back of [his] hand."

Respondent signed in at 8:00 a.m. on December 8, 2011. Sergeant Cazah and Detective Lamoglia signed in the Command Log on the lines immediately below him, also for an 8:00 a.m. start time. [RX F is a copy of the Command Log for that day.] At 4:30 p.m. that day, Respondent received notification to report to the Medical Division in Queens for a drug test. He left for Queens an hour later and did not go end of tour until 7:35 p.m. Respondent noted Case 2189 on his overtime slip. He did not note the drug test or any of the other cases that he worked on that day. He explained, "If I put every task I do on these slips, I would need two slips. The normal practice is to put the case number down. You don't put every single thing you do on the overtime slip." There was no

specific reason why he chose to put Case 2189 on his slip, and he reiterated that it was just "normal practice to put a case number down."

Respondent signed in at 8:00 a.m. on December 15, 2011. [RX G is a copy of the Command Log for that day.] He supervised lineups that day. Lineups would not have required him to be logged onto ECMS. He also went to One Police Plaza for a meeting about a crime pattern, Pattern 114. All he noted on his overtime slip was Pattern 114. He did not note the lineups because it was not normal practice to note administrative duties, such as lineups, on overtime slips. According to Respondent, the 8:01 a.m. call noted on the cell phone invoice for that day was an incoming call from his wife originating from Queens. Respondent was at work in the command at the time of the call.

Respondent signed in at 8:00 a.m. on January 3, 2012. [RX H is a copy of the Command Log for that day.] According to Respondent, the 8:06 a.m. call noted on the cell phone invoice for that day was an incoming call from his wife. The call came from Long Island, and Respondent assumed that his wife was calling from her doctor's office in Manhasset. When asked why he did not log onto ECMS while on overtime, he reiterated that he did not typically log onto the system upon his arrival at work.

As a result of the investigation against him, Respondent was placed on modified duty assignment and the Department deducted \$5,229.01 of overtime from his paycheck over the course of two pay periods. [RX E1 is a memorandum from the Payroll Section about the deduction, and RX E2 consists of copies of the paychecks showing the deductions.] Respondent testified that he neither abused nor misused overtime. He explained, "At the 72 [Precinct], I grew up in that command. That's my own command. That's where my [REDACTED] still lives. I love that place. I love doing what I did. I wouldn't

jeopardize it by doing what they alleged me of doing." He continued, "I worked the overtime. I might have made mistakes putting in wrong case numbers. Not putting when I went to dole. But I was there. Those are my signatures. It's consistent with all the other signatures in the Command Log. I was present there." While he was Commanding Officer of the 72 Precinct Detective Squad, the squad had the best case clearance percentage in the zone.

On cross-examination, Respondent reiterated that while on overtime he performed tasks aside from what he actually denoted on his overtime slips. He conceded that in the overtime slip section for the reason for overtime, the slip reads, "Identify incident specifically."

Crime patterns, such as Pattern 114, were not recorded in ECMS. When a detective printed a hardcopy of a case folder, it was easier for Respondent to review the hardcopy than to log onto ECMS for a review of the electronic copy. He reviewed the folders to double-check that the detectives were following protocol. He regularly reviewed folders when the investigating detectives were not present. If he had issues with a detective's work he would speak with that detective once the detective arrived. Although he did not recall specifically what he did while on overtime on December 8, 2011, he most likely pulled the folder for Case 2189 off of Burchette's desk that day.

Respondent conceded that he noted Case 1856 (a case that had been closed for 20 days) as the basis for his overtime on October 25, 2011 even though he did not access that case on ECMS until his last 20 minutes of the day. He explained that during the rest of his overtime period he was likely reviewing robbery cases from the night before to see if Case 1856 and more recent robberies fit some sort of pattern.

When asked how Case 35 could have been the basis for his pre-tour overtime on January 6, 2012 when that case was not even reported until 12:00 p.m. that day, Respondent could not provide an explanation other than that he might have made a mistake.

Respondent did not know what Decker's testimony that overtime was not authorized for administrative functions such as Compstat was based on. Respondent has never seen a memorandum indicating that he could not get administrative overtime. Respondent could not explain why he indicated that Case 2213 was the basis for overtime on December 2, 2011 when in fact he spent the overtime period preparing for Compstat. He testified about that day, "But they wanted to see you at 6:00 in the morning for Compstat when we have to prepare for the cases." He did not recall if Case 2213 was discussed at the Compstat meeting.

Respondent was interviewed by the Chief of Detectives Investigations Unit on April 19, 2012. At the time, he could not recall the tasks he did on the days in question. His memory of certain of those days has been refreshed since then by discovery material that he has been given an opportunity to review.

He did not indicate in his Activity Log that he went end of tour from the Medical Division on December 8, 2011. He explained, "I wrote end of tour. I would never specifically say where I am in my tour. You can go through my memo book for 22 years, I just wrote end of tour. Never says the location." He conceded that he did not memorialize his trip to the Medical Division in the Movement Log or Vehicle Utilization Log. Similarly, he neglected to memorialize in his Activity Log and the Vehicle Utilization Log that he visited his wife in [REDACTED] on January 24 and February 10, 2012.

Respondent testified that he remained within the confines of his command on October 6 and November 16, 2011 and February 1, 2012, and he did not know why cell phone invoices indicated otherwise.

On redirect examination, Respondent accepted responsibility for neglecting to make Activity Log entries regarding his travels outside the command to places such as the Fleet Services Division and Medical Division.

About reviewing closed cases, Respondent explained that this was part of his normal routine for pattern detection. He testified, "My main focus is to create patterns. Because I didn't want to be called at Compstat and be embarrassed as to why I didn't create patterns for certain crimes. Even though they were closed you should look at them."

Respondent testified that he on occasion received notification of recently-committed crimes before case numbers for those crimes were generated in the computer. Although he did not have a specific recollection of that happening on January 6, 2012, it was a possible explanation for his writing Case 35 on his overtime slip that day.

If Respondent performed different tasks on pre-tour overtime and post-tour overtime, he would indicate just one of the tasks on his overtime slip. He regularly received phone calls from supervisors at all hours of the day with questions about cases. To answer these questions, he needed to access cases even when the detectives handling the cases were not present.

Upon further questioning, Respondent testified that he logged onto ECMS at least once each tour, but the number of times that he logged on in a day varied. He also logged onto other computer applications on a daily basis. There was no rule that required

Respondent to log onto ECMS every day or to be logged onto the system while on overtime.

Respondent conferred with other Commanding Officers within his zone about how to prepare overtime slips. He was told that the only basis for overtime that he needed to include on a slip was a case number or pattern. This was true of overtime slips submitted in detective squads throughout the city.

Respondent was notified whenever a detective wanted to close out a case in ECMS. Respondent would review the case to ensure that all leads were exhausted and then close out the case for the detective. It was possible that days or weeks would pass before the detective started the closing-out process and Respondent finalized it.

Members of the service are often ordered to report to the Medical Division for drug testing while on overtime. Respondent gave the example of officers who work midnight tours and need to be tested on overtime since drug tests are not conducted during the night.

It was necessary for a supervisor to be at lineups. There were two sergeants who worked the day tour in the 72 Precinct Detective Squad, but Respondent did not recall if they were working on December 15, 2011. There were people who were paid to be "fillers" in lineups, and Respondent was responsible for the money.

The squad had a timekeeper, but she had problems with the CityTime timekeeping system. Respondent was familiar with the system and oversaw the timekeeper's work. He was also responsible for sending copies of the roll call to the borough.

On redirect examination, Respondent confirmed that he was the only supervisor at work until 2:00 p.m. on December 15, 2011.

On recross-examination, Respondent confirmed that a case was designated as open in ECMS until he or another supervisor finalized the closing process.

FINDINGS AND ANALYSIS

The investigation which led to the charges in this case was conducted looking back in time, primarily using the invoices of Respondent's Department issued cell phone to determine if Respondent was in his precinct when he indicated that he was, and conducting reverse audits of Respondent's access to ECMS to determine if Respondent worked on a case on a particular date and time, as he claimed on his overtime slips. No personal surveillance of Respondent was performed, no EZ Pass records of Respondent's vehicle were obtained, no subpoena was issued to Verizon for the cell site records of Respondent's cell phone, and no phone records from Respondent's landline, office phone were obtained to determine his office phone usage during the period in question. The Department's witnesses who reviewed Respondent's cell phone records admitted that they had no expertise in interpreting cell phone bills or cell phone tower records. Respondent testified on his own behalf and offered a generally credible explanation as to his overtime work. However, Respondent admitted to misconduct on three dates in question and admitted to the charges in Specification No. 3, which were Activity Log deficiencies, and the Department proved some of the remaining charges against Respondent.

Although it is a common investigative step in misuse of time cases to conduct personal surveillance of the members of the service and to obtain EZ Pass records, Decker testified that, in this case, there was no personal surveillance of Respondent and no EZ Pass records were obtained for his Department vehicle. Decker explained that his commanding officer determined personal surveillance of Respondent was unnecessary in

that the records “were much more ironclad than physical observations” Decker explained, “We had spoken with communications. They assured us that the towers were correct. That the times were correct.... Better than just a visual observation of him coming and going.” In addition, although Respondent had a landline phone in his office, no phone records were obtained to determine Respondent’s office phone usage during the period in question. As will be explained below, the Department’s reliance on cell phone invoice records, examined by witnesses who lacked expertise in interpreting cell phone bills and cell tower records, to prove the Department’s case was problematic.

The Department asserted that the cell tower sites noted in the cell phone records provided proof of Respondent’s whereabouts at times when he was on-duty. The Department further asserted that during the dates in question, the cell tower sites proved that Respondent was not at his command when he should have been, or that he was so far away from his command that he could not have been at his command at a time he claimed to be there, or that he was at a location unrelated to any possible case on which he could have been working.

The Department’s assertions were generally not persuasive in that their main witnesses, Decker and Connor, showed the weaknesses and inconsistencies in the Department’s arguments. Decker admitted that he had no personal expertise with respect to interpreting cell phone records or cell tower sites. Decker admitted that he never reached out directly to Verizon, which provides the service for Department-issued cell phones including Respondent’s, in order to get Respondent’s cell phone records. Although Decker would have issued a subpoena directly to Verizon for the cell site records of a private phone, the subpoenas were used “for private phone, not Department phones.” Had

Decker issued a subpoena for Respondent's cell site records, Verizon would have provided the Department not with cell phone bills, as were used in this case, but cell site records. Instead, Decker relied on two consultations with the Department's Communications Division.

In consulting with the Department's Communications Division, Decker said that he was assured that Respondent's phone records were accurate, and the basis for the assurance was that "they had queried Verizon in the past, and that these were drillable, which was the term they used, reports." According to Decker, "drillable" meant that these were "hard cell towers. They are not bounced sites. They can actually, if need be, we can subpoena Verizon and get the exact time and grid coordinates of the phone call." However, by their own admission, the Department did not subpoena Verizon for the exact time and grid coordinates of Respondent's phone calls, and Decker's analyses of the exact time and grid coordinates of Respondent's phone calls were repeatedly challenged by Respondent's counsel.

On cross-examination, Decker admitted that atmospheric conditions, wind speed and the strength of a satellite at a given time of a phone call could affect which tower handled the call. Decker conceded that the locations given on Respondent's cell phone invoices provided a general geographical area of call origination location but did not always delineate which specific cell tower was used. For example, calls handled by cell towers in Brooklyn were listed as originating in "Brooklyn" without giving any specific neighborhood. In contrast, calls handled by towers in Queens were identified by the neighborhood. Decker assumed that a call placed in the 72 Precinct would not be handled by a tower in Queens, but this assumption was not based on any sort of technical expertise.

On one occasion, October 6, 2011, Decker testified that Respondent's cell phone had a "tower hit" in Rockaway Park at 12:20 p.m., but he did not know if that referred to the neighborhood in Queens or the street in Brooklyn named Rockaway Parkway. Decker acknowledged that just because the phone bill said Elmhurst, New York, or Bronx, New York, it did not mean that Respondent was in Elmhurst or the Bronx at the time the calls were made.

Decker testified that Respondent signed in-person in the Command Log on the dates in question. Decker confirmed that there was no reason to believe that anyone other than Respondent signed in the Command Log.

Decker consulted Connor, the Integrity Control Officer of the Department's Telecommunications Unit, with respect to Respondent's cell phone records, but Connor admitted, on cross-examination, that she was not an expert in interpreting cell phone bills or cell tower records. The invoices that Connor retrieved for this case she downloaded from the Verizon website; they were not cell-site records. Connor assumed that Verizon had hundreds of cell towers in Brooklyn, and she did not know why Brooklyn neighborhoods were not specified on the invoices, in contrast to the neighborhoods in Queens, which were specified. Finally, Connor admitted that her knowledge forming the basis of her testimony was solely due to a phone conversation she had with a Verizon representative, who explained to her the meaning of the terms "origination" and "destination," as they appeared on the cell phone invoices.

Connor also testified that the cell towers would be the closest to which the caller was able to connect. She testified that a body of water can "interfere" with the closest tower. She testified that the 72 Precinct, where Respondent's command was housed, is

adjacent to the harbor so that Staten Island, Manhattan or New Jersey might appear as the closest towers.

The reliability of the cell phone invoices emerged as a significant issue during the trial. For example, the Department repeatedly alleged that Respondent was absent from work during many of the dates in question even though he signed in the Command Log at 8:00 a.m. The bases for the conclusion that Respondent was not present at the precinct were cell phone invoices that purportedly showed him to be elsewhere. However, Decker confirmed that there was no reason to believe that anyone other than Respondent signed in for Respondent in the Command Log. Respondent testified that those were his signatures in the sign-ins and on one occasion, November 1, 2011, Sanford, Respondent's supervisor, testified that he signed in at 8:00 a.m., right after Respondent. Now, unfortunately, this Court is familiar with a practice in which members of the service leave a line open for a late-comer to sign in, but there was no allegation that such a thing happened here. Furthermore, the discrepancy might be that Respondent signed in and then went out, but there was no credible evidence to support the allegation that he essentially stole time from 8:00 a.m., as repeatedly alleged, and on many of the dates in question, there was no credible evidence to establish that Respondent left the precinct to attend to personal, and not Departmental, matters.

Respondent argued that the cell phone evidence the Department provided was not reliable. Respondent noted that the documents the Department was using were not specific cell phone tower records but simply cell phone invoices. Respondent asserted that if the Department intended to rely on cell phone tower records, it should have subpoenaed those

specific records. Finally, Respondent argued that the Department failed to produce an expert witness to reliably explain the value and import of the cell phone tower records.

The value of the cell phone evidence presented must be considered in connection with the other evidence. Alone, the cell phone evidence is insufficient to prove the Department's case. However, the Department also presented evidence of reverse audits of Respondent's access to ECMS to invalidate Respondent's claim that he was working on a particular case on overtime, as he stated on his overtime slip. The Department's evidence with respect to the overtime slips, ECMS, as well as Respondent's testimony, will be analyzed below.

With respect to the overtime slips regarding Specification No. 2, the Department presented as evidence Respondent's overtime slips on several but not all of the dates in question. For those dates where the Department failed to submit into evidence Respondent's overtime slips, the Department presented Decker's testimony and as an aid to the Court, Decker's three-page Investigating Officer's Report dated January 2, 2013 regarding Respondent's alleged misuse of overtime (DX 1), and a one-page Time Records Analysis Report regarding Respondent (DX 1A). As Respondent's counsel correctly pointed out, both documents contained errors.

Comparing DX 1A with Respondent's actual overtime slips yielded the following errors on DX 1A. With respect to September 16, 2011, where the Department alleged that Respondent made false entries on his overtime slip (DX 4) and did not actually perform work on Case 1698 during his overtime tour, in fact, on his overtime slip, Respondent wrote that "the reason for lost time" was "Investigate DOA." Although Respondent also noted Case 1698 on his overtime slip for that date, DX 1A did not mention at all

Respondent investigating a DOA as the basis for his overtime on September 16, 2011. With respect to October 6, 2011, on his actual overtime slip (DX 5), Respondent wrote that he started his pre-tour overtime at 8:30 a.m.; however, in DX 1A, the report incorrectly noted Respondent's pre-tour overtime as starting at 8:00 a.m. With respect to December 8, 2011, Respondent wrote on his actual overtime slip (DX 13) that the basis for his overtime was Case 2189; however, in DX 1A, the report incorrectly noted the basis of overtime was Case 2198. (This error was also contained in DX 1 and was subsequently corrected on the record by Decker when he testified). With respect to December 15, 2011, Respondent clearly and legibly wrote that the basis for his overtime was Pattern 114 (DX 14); however, DX 1A incorrectly noted that Respondent's basis for overtime on this date was illegible. It is concluded that the inaccuracies in DX 1 and DX 1A render the documents unreliable.

The basis for Decker's testimony with respect to the charges in Specification No. 2 appeared to be either the overtime slips by Respondent admitted into evidence, or absent the overtime slips, DX 1 and DX 1A, which have been deemed unreliable. Thus, with respect to the charges in Specification No. 2, for those dates where Respondent's overtime slips were not admitted into evidence, corroborating evidence is necessary to prove the charges against Respondent.

With respect to the reverse audits, Decker looked at Respondent's access to ECMS to determine when Respondent logged in and logged out and in doing so, Decker claimed that with respect to the dates in question, although Respondent alleged that he was working on a case during overtime, his access to ECMS many times proved otherwise. Decker testified that ECMS was used for all case work. Since 2011, the new Chief of Detectives has ordered that no hard case files and only electronic case files be maintained. Decker

testified that the new chief instituted a very rigorous overhaul of the Detective Bureau. "He wanted to make sure that the command and movement log were being properly filled out. That detectives were actually being documented entering and leaving the command, so he had them report to the desk when there is not a supervisor present when entering or leaving for duty."

However, on cross-examination, Decker acknowledged that a detective is permitted to print out hardcopies of his case folders, and a lieutenant like Respondent can review these folders even when the detective assigned to a case is not present at the command. Decker also acknowledged that besides the ECMS program, Respondent had access to various programs on his Department computer, but ECMS was the only program on Respondent's computer to have its history checked as part of the investigation, and the investigation specifically looked at the cases Respondent wrote on his slip for overtime.

Sanford, Respondent's immediate supervisor, corroborated a portion of Decker's testimony with respect to ECMS, in that Sanford testified that normally all casework was performed on ECMS, that hardcopies were printed only for extraordinary cases, and when his subordinates performed overtime, they had to indicate the ECMS case numbers on their overtime slips. On cross-examination, Sanford acknowledged that there was no prohibition on printing out case files, that there was no mandate that a lieutenant like Respondent be signed onto ECMS while on overtime, and that as the squad commander, Respondent had many responsibilities in addition to case supervision. On redirect examination, Sanford testified that it would have been proper for Respondent to indicate on his slips the case numbers of all the cases he worked on and any other tasks that he conducted while on overtime.

Respondent testified that he was the Commanding Officer of the 72 Precinct Detective Squad during the period in question, and as such, he had numerous duties and responsibilities, which included maintaining the Command Log, Movement Log, and Icard Log; inspecting the Activity Logs of his subordinates and disciplining them when necessary; detecting crime patterns through the Real Time Crime Center; creating and adjusting roll calls; assigning detectives their cases; authorizing overtime; notifying detectives for court appearances and details; maintaining payroll records; reviewing complaints; talking with the Commanding Officer of the precinct; attending meetings with the Borough Chiefs and Department Chiefs; supervising arrests; managing a small budget; and acting as a Spanish translator.

Sanford and Respondent both testified that the 72 Precinct Detective Squad was the busiest command in the zone and Sanford described the 72 Precinct Detective Squad as very efficient. While Respondent was the Commanding Officer, the squad had the best clearance percentage in the zone. Respondent testified that he grew up in the command, his [REDACTED] still lives there, he loved the command and loved doing what he did, and that he “wouldn’t jeopardize it by doing what they alleged me of doing.”

Arriving at work each day, Respondent did not immediately log onto ECMS. He explained, “What I like to do is to see what crimes happened the night before. So I logged into the complaint system. Which is the OMNI. I logged into that once I walked in to see if there was a listing for robbery that happened the night before. If it fit into one of our patterns.” Respondent explained that his “boss” called him regularly to find out about certain crimes happening within the command and in order to answer his boss’s questions,

he needed to know. "So I would log onto the OMNI to see what crimes happened the night before."

Once he logged onto his computer, Respondent had access to ECMS, OMNI and numerous other applications. At times, he would close logs in the Icard system, which was done manually. In addition to his administrative responsibilities, Respondent supervised the 13 detectives in his squad and their investigation of cases.

Respondent named three detectives who printed many of their cases and in reviewing their work, Respondent pulled the case files from their desks, which did not require Respondent to be logged onto ECMS to work on the case. Respondent testified that Detective Wakefield, who handled domestic violence cases, printed many of her cases because she found it easier to conduct home visits and speak with the victims with the case folders in front of her. When reviewing Wakefield's work, Respondent would pull the cases from her desk and have daily discussions with her, and as a result of which, Respondent was not on the computer.

Respondent also testified that Detective Burchette, who handled identity theft cases, printed many of his cases as well and he probably found it easier to deal with hardcopies, given the large number of subpoenas and correspondence from banks and phone companies that were a part of his case folders. Detective Lamoglia was another one who printed all of his cases because he was older and preferred to look at physical paper, rather than the computer. With respect to these three detectives, Respondent testified that just because he was not logged onto ECMS, it did not mean he was not present in the command performing other tasks.

Respondent also explained that with respect to detecting crime patterns, he tried to detect patterns occurring not only within the 72 Precinct but also in neighboring commands and citywide. He reviewed closed cases for pattern-detection purposes. During the period in question, Respondent was working on six active patterns, such as rape patterns and grand larceny/robbery patterns. He explained that he was getting calls at his house about these and other patterns within the City. Respondent worked closely with Detective Karolkowski on Pattern 114, and Respondent and the detective kept pattern books on their desks, which were not downloaded onto the computer.

Respondent testified that crime patterns, such as Pattern 114, were not recorded in ECMS. When a detective printed a hardcopy of a case folder, Respondent found it easier to review the hardcopy than to log onto ECMS for a review of the electronic copy. He reviewed folders to ensure that the detectives were following protocol. He regularly reviewed folders when the investigating detectives were not present, and if he had issues with the detective's work, he would speak with the detective once he/she arrived at the squad.

Respondent testified that he regularly performed overtime during the period in question, in that he had so many tasks and responsibilities that it was impossible for him to complete them all within his regular tour of duty. Respondent testified that Sanford authorized all the overtime slips he submitted. Respondent explained that there was no policy mandating that the Commanding Officer of a detective squad be signed onto ECMS to perform overtime. Respondent testified that, as was common practice, he noted case numbers on his overtime slips; however, he did not write on the slips every task that he performed and he did not break up the tasks according to whether he performed them on

overtime or straight time. Respondent also admitted that he “might have mistakes putting in wrong case numbers. Not putting when I went to dole.” However, he claimed that he “worked the overtime.”

Respondent’s memory with respect to each of the dates in question was much better during the trial than it was during his official Department interview, when he could not recall the tasks that he did on the dates in question. Respondent testified that his memory was refreshed by discovery material received for trial preparation, which gave him an opportunity to review before trial.

Furthermore, Respondent admitted misconduct on three dates in question, December 8, 2011, January 24, 2012, and February 10, 2012, and admitted to the charges in Specification No. 3. Respondent admitted that on December 8, 2011, he did not indicate in his Activity Log that he went end of tour from the Medical Division. He conceded that he did not memorialize his trip to the Medical Division in the Movement Log or the Vehicle Utilization Log.

Respondent admitted that on January 24, 2012 and February 10, 2012, he left the command without seeking permission or submitting UF-28s [Leave of Absence Reports], and he went home, while on-duty, to be with his bed-ridden wife who was in the midst of a high-risk pregnancy. Respondent testified that he exhibited a lapse in judgment in his misconduct. He testified that he thought he would serve the Department better if he went “home real quick and c[a]me back instead of taking the whole day off.” On both of these dates, he admitted that he failed to memorialize his movements in the Activity Log and the Vehicle Utilization Log.

Finally, Respondent testified that since June 2012, he has been on modified duty status, presently assigned to Housing Bureau Viper 8. As a result of the investigation, the Department deducted \$5,229.01 of overtime from his paycheck over the course of two pay periods.

Using the overview of the above evidence, below I make my findings with respect to each specification.

Specification No. 1

It is charged that Respondent, while assigned to the 72 Precinct Detective Squad, on or about October 6, 2011, November 16, 2011, January 24, 2012, February 1, 2012, and February 10, 2012, was absent from said assignment without permission or police necessity.

With respect to October 6, 2011, the Department alleged that at 12:20 p.m., while on-duty, Respondent was outside the confines of the 72 Precinct in Brooklyn, in that his cell phone had a “tower hit” in Rockaway Park. The Department further alleged that Respondent failed to document his trip in his Activity Log and Vehicle Utilization Log.

Respondent denied the charge and testified that at no point during his tour that day, did he go to the Rockaways, and that going to the Rockaways would have required him to cross a toll bridge. Respondent had a Department vehicle with an attached EZ Pass. As mentioned earlier, the Department failed to provide any EZ Pass records to show Respondent’s movement as alleged. Moreover, Decker testified that with respect to this date’s “tower hit,” he did not know if it referred to the neighborhood in Queens or the street in Brooklyn named Rockaway Parkway. The Department’s cell phone invoice

evidence in this instance (DX 5A) did not rise to the level of credible preponderance of the evidence and the Department failed to provide any other proof that Respondent left his precinct without permission or police necessity on October 6, 2011. Accordingly, I find Respondent Not Guilty.

With respect to November 16, 2011, the Department alleged that Respondent's cell phone invoice (DX 11A) showed that at 2:05 p.m., Respondent was in Forest Hills and at 2:15 p.m., Respondent was in Rego Park. During his official Department interview, “[r]ecords indicated that he was en route to the vicinity of the 78 Precinct, but Verizon records show his cell at other times and locations, and we specifically asked him about 2:05 in Forest Hills, New York, and 2:15 p.m. in Rego Park, and [Respondent] could not explain the discrepancies for those two cell hits.” Respondent testified that he remained within the confines of his command on this date and he did not know why the cell phone invoices indicated otherwise. Absent any evidence other than the cell phone invoice, the Department failed to prove that Respondent left his precinct without permission or police necessity on November 16, 2011, and I find Respondent Not Guilty.

With respect to January 24, 2012, I find Respondent Guilty as charged based on his own admission.

With respect to February 1, 2012, the Department alleged that Respondent's cell phone invoice (DX 19A) showed a number of calls between 9:38 a.m. and 10:25 a.m. from Queens and the Bronx. In addition to Respondent's cell phone invoice, the Department provided further proof with respect to this charge by introducing into evidence Respondent's Vehicle Utilization Log (DX 20), which showed Respondent left the confines of his command with his vehicle at 9:00 a.m. to travel to 61 Street and 5 Avenue

and returned at 4:30 p.m. During his official Department interview, Respondent was unable to explain his vehicle usage and why he left the confines of the command. Based on the foregoing, I find Respondent Guilty as charged.

With respect to February 10, 2012, I find Respondent Guilty as charged based on his own admission.

Specification No. 2

It is charged that Respondent, while assigned to the 72 Precinct Detective Squad, on or about and between September 7, 2011 through February 22, 2012, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that Respondent made false entries in Department records when he indicated on overtime slips that he performed work on specific cases which was not actually performed.

With respect to the charges in Specification No. 2, the Department did not allege that Respondent failed to do any work during the dates in question. Instead, the Department claimed that, on the dates alleged, Respondent did not perform overtime work on the specific cases or patterns that he wrote on his overtime slips.

With respect to September 7, 2011, the Department charged Respondent with making a false entry in the Department records by claiming that during his pre-tour overtime (8:00 a.m. to 9:30 a.m.) he was working on Pattern 105. The Department claimed that because his cell phone invoice (DX 3) indicated a "hit" in Elmhurst, New York, at 8:38 a.m., Respondent was not in the precinct during his pre-tour overtime to work on Pattern 105 as he alleged on his overtime slip (DX 2), and that he did not access Pattern 105 on ECMS until 6:59 p.m., which was while he was on his post-tour, not pre-tour, overtime.

Respondent signed in the Command Log at 8:00 a.m., which was not disputed, and the cell phone invoice "hit" at 8:38 a.m., by itself, is deemed insufficient evidence to prove that Respondent was not in the precinct at that time. However, the Department also argued that because a reverse audit of ECMS showed that Respondent did not access Pattern 105, the basis for his overtime, until 6:59 p.m., he was not working on said pattern during his pre-tour overtime and made a false entry on his overtime slip. The Department's evidence regarding the false entry is insufficient.

Sanford corroborated Respondent's testimony that there was no mandate that Respondent be signed onto ECMS while on overtime. Respondent testified that he logged onto ECMS at least once each tour, but the number of times that he logged on varied each day. He testified that he worked the overtime, that when he conferred with other Commanding Officers within his zone on how to prepare overtime slips, he was told to include a case number or pattern, and that he did not write on the overtime slip every task that he performed.

Sanford corroborated Respondent's testimony that the 72 Precinct Detective Squad was the busiest command in the zone and Sanford described it as very efficient. While Respondent was the Commanding Officer, the 72 Precinct Detective Squad had the best clearance percentage in the zone. Respondent had many duties and responsibilities, including supervising 13 detectives in his squad, which required him to review their cases. Three detectives, Wakefield, Burchette and Lamoglia, printed many of their cases and found it easier to have physical case folders. Respondent testified that he would review cases by pulling the physical case folders from the detectives' desks, and would do so even if the detectives were not present. This task did not require Respondent to be on the

computer and it did not mean that he was not performing the task even though he was not logged onto ECMS.

During the period of time in question, Respondent was working on six active crime patterns. Respondent testified that he was receiving calls at home from his “boss,” who was inquiring about patterns and other cases. Respondent testified that he had to be on top of the cases, in order to answer the questions of his supervisor and the Deputy Commissioner of Public Information.

ECMS was only one of many computer applications on Respondent’s computer. Respondent logged onto ECMS at least once a day, but he used other applications, including OMNI daily to “see what crimes happened the night before” and to determine whether there was a pattern.

Given the above testimony, the Department’s argument that Respondent could not have been working on Pattern 105 during his pre-tour overtime because he waited until his post-tour overtime to log onto ECMS to look at Pattern 105 is speculative and weak.

Given Sanford’s and Respondent’s testimony that there was no mandate that Respondent be signed onto ECMS while on overtime; given Respondent’s numerous responsibilities as a Commanding Officer and his supervision of the caseloads of the detectives in his squad, including reviewing the hardcopy of case folders; and given the fact that he did log onto ECMS on September 7, 2011, regarding Pattern 105; I find the Department did not prove its charge against Respondent by a preponderance of the credible evidence, and I find Respondent Not Guilty.

With respect to September 16, 2011, the Department charged Respondent with making a false entry in the Department records by claiming that during his pre tour (8:00

a.m. to 9:30 a.m.) and post-tour (6:05 p.m. to 6:35 p.m.) overtime he was working on Case 1698, work which he allegedly did not perform while on overtime. The Department said that Respondent's cell phone invoice (DX 4A) showed that at 8:04 a.m., Respondent was allegedly in Maspeth, New York, and not in his precinct, and a reverse audit of ECMS showed that he did not access Case 1698 until 5:11 p.m., while on straight time.

However, the Department did not prove this charge, in that Respondent signed in the Command Log at 8:00 a.m. on September 16, 2011, and several members of the service signed below him, also at 8:00 a.m., and by itself, the cell phone invoice is deemed insufficient to prove that Respondent was not in the precinct at 8:00 a.m. In addition, Respondent's overtime slip (DX 4) also indicated that the basis for his overtime that day was an investigation of a "DOA," which as Decker confirmed, can involve many different investigative steps that would not require Respondent to sign onto ECMS. Based on the foregoing, I find Respondent Not Guilty.

With respect to October 6, 2011, the Department charged Respondent with making a false entry in the Department records by claiming that during his pre-tour (8:00 a.m. to 9:30 a.m.) and post-tour (6:05 p.m. to 6:35 p.m.) overtime he was working on Case 1489, work which he did not actually perform while on overtime. Decker testified that a reverse audit of ECMS showed that Respondent did in fact access Case 1489, but on straight time at 5:35 p.m. Given Respondent's testimony regarding his numerous duties, responsibilities and habits as Commanding Officer and his habit of logging onto ECMS at least once a day, I find the fact that he did access ECMS regarding Case 1489 on October 6, 2011, sufficient evidence that he worked on Case 1489 during his overtime, and I find Respondent Not Guilty.

With respect to October 7, 2011, the Department charged Respondent with making a false entry in the Department records by claiming that during his pre-tour (8:00 a.m. to 9:30 a.m.) and post-tour (6:05 p.m. to 7:35 p.m.) overtime he was working on Pattern 74, work which he did not actually perform. To prove its charge, the Department presented Respondent's cell phone invoice (DX 6A), which according to the Department, showed that Respondent was in Elmhurst, New York, at 8:23 a.m. and a reverse audit of ECMS, which showed that he accessed Pattern 74 at 9:20 a.m. Again, the cell phone invoice is insufficient evidence to prove that Respondent was not in the precinct during his pre-tour overtime. Also, given Respondent's testimony regarding his numerous duties, responsibilities and habits as Commanding Officer and his habit of logging onto ECMS at least once a day, I find the fact that he did access ECMS regarding Pattern 74 on October 7, 2011, sufficient evidence that he worked on Pattern 74 during his overtime, and I find Respondent Not Guilty.

With respect to October 17, 2011, the Department charged Respondent with making a false entry in the Department records by claiming that during his pre-tour (8:00 a.m. to 9:30 a.m.) and post-tour (6:05 p.m. to 7:05 p.m.) overtime he was working on Case 1945, work which he allegedly did not perform while on overtime. To prove its charge, the Department presented Respondent's cell phone invoice (DX 7A) which showed a tower hit in Rego Park, New York, at 7:59 a.m. and a reverse audit of ECMS which showed that he accessed Case 1945 during straight time at 5:15 p.m. Again, the cell phone invoice is insufficient evidence to prove that Respondent was not in the precinct during his pre-tour overtime. Also, given Respondent's testimony regarding his numerous duties, responsibilities and habits as Commanding Officer and his habit of logging onto ECMS at

least once a day, I find the fact that he did access ECMS regarding Case 1945 on October 17, 2011, sufficient evidence that he worked on Case 1945 during his overtime, and I find Respondent Not Guilty.

With respect to October 18, 2011, the Department charged Respondent with making a false entry in the Department records by claiming that he was working on Case 1856 on his overtime slip (DX 8); however, Case 1856 had been closed 13 days earlier. In addition, according to Respondent's Activity Log and Movement Log, Respondent actually performed his pre-tour overtime (8:00 a.m. to 9:30 a.m.) at the Fleet Services Division in Woodside and his post-tour overtime (6:05 p.m. to 7:05 p.m.) at Detective Borough Brooklyn. Decker testified that going to the Fleet Services Division was an administrative function for which overtime should not have been granted. Although Respondent was responsible for all of the Department vehicles assigned to his command, Decker reiterated that Department guidelines did not allow for overtime for administrative duties, such as servicing of cars. Respondent admitted that he went to the Fleet Services Division. Based on the foregoing, I find Respondent Guilty.

With respect to October 25, 2011, the Department charged Respondent with making a false entry in the Department records by claiming on his overtime slip that he was working on Case 1856, when in fact Case 1856 had been closed on October 5, 2011. Decker testified that Respondent did in fact access Case 1856 on October 25, 2011 while on overtime at 6:15 p.m. The Department did not present Respondent's overtime slip into evidence.

However, Respondent conceded that he identified Case 1856, a closed case, as the basis for his overtime on this date and that he did not access said case on ECMS until the

last 20 minutes of the day. Respondent claimed that during the rest of his overtime period, he was likely reviewing robbery cases from the night before to see if Case 1856 and more recent robberies fit a pattern. The Department did not charge Respondent with misusing his overtime but instead charged him with making a false entry in the Department records by not working on Case 1856 on his overtime, which he clearly did. Thus, based on the foregoing, I find Respondent Not Guilty as charged.

With respect to November 1, 2011, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 9:30 a.m.) overtime for working on Case 2054, work which he allegedly did not perform while on overtime. The Department presented Respondent's cell phone invoice (DX 9A) which they claimed indicated that he was in Rego Park, New York, at 8:48 a.m., and a reverse audit of ECMS showed that he accessed Case 2054 while on straight time at 11:46 a.m.

Respondent signed in the Command Log at 8:00 a.m. on November 1, 2011, and Sanford and Detective Karolkowski both signed the Command Log immediately after Respondent. Sanford confirmed his signature in the Command Log during his testimony. Given the insufficiency of the cell phone invoice records as evidence and the lack of evidence refuting Respondent's signature in the Command Log, the Department did not prove that Respondent was absent from the precinct during his pre-tour overtime.

During his official Department interview, Respondent said that on November 1, 2011, he had "been called in on a missing female and was ordered in by his Commanding Officer." During trial, Respondent testified that many people came in early that day to work because the squad was handling a missing person case involving a girl from Texas. The girl was ultimately found in Queens, and Respondent most likely put that case number

on his overtime slip. When asked why he did not log onto ECMS until 11:45 a.m., Respondent explained that he had been up the night before with respect to the case and knew the steps that were being taken, “[s]o I didn’t need to log into ECMS to know about the case and to instruct the detective to make sure they go out and do video canvasses. Go to [the] bar she was supposedly at. So I didn’t need to log onto ECMS at eight o’clock in the morning.”

Based on the foregoing, I find the Department failed to prove its charge that Respondent did not perform work on Case 2054 during overtime, and I find Respondent Not Guilty.

With respect to November 2, 2011, the Department charged Respondent with making a false entry in the Department records by claiming on his pre-tour (8:00 a.m. to 9:30 a.m.) and post-tour (6:05 p.m. to 7:05 p.m.) overtime slip that he worked on Case 2070, when in fact the complaint for Case 2070 was not even reported until 11:30 a.m., so Respondent did not perform the work he claimed. The Department did not present Respondent’s overtime slip into evidence.

Absent any corroborating evidence, such as the overtime slip or Respondent’s testimony, the Department failed to prove by a preponderance of the credible evidence that Respondent made a false entry in the Department records on November 2, 2011, and I find Respondent Not Guilty.

With respect to November 3, 2011, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 9:30 a.m.) overtime working on Case 2075, work which he allegedly did not perform while on overtime. The Department claimed that Respondent’s cell phone invoice (DX 10A)

showed that he was in [REDACTED] New York, at 7:56 a.m., and a reverse audit of ECMS showed Respondent accessed Case 2075 during straight time at 4:25 p.m.

Respondent signed in the Command Log at 8:00 a.m., and Sergeant Astras signed immediately below Respondent, also at 8:00 a.m. Absent any evidence refuting Respondent's signature, the cell phone invoice is insufficient evidence to show that Respondent was not present in the precinct at 8:00 a.m. or that he left the precinct without permission or necessity.

Moreover, Respondent testified that he mistakenly wrote Case 2075 on his overtime slip (DX 10), when in fact he was working on Case 2054, which was the case of the missing girl from Texas. When asked why he did not log onto ECMS until 4:25 p.m., Respondent explained that the missing girl's family spoke Spanish and he was translating during the course of the investigation. Furthermore, he testified that there was no need for him to log onto ECMS in that he "knew the case like the back of his hand."

Although Respondent's notation of the case number on his overtime slip may have been a mistake, it was a false entry for which I find Respondent Guilty.

With respect to December 2, 2011, the Department alleged that Respondent made a false entry in the Department records by claiming five hours of overtime for working on Case 2213, work which he allegedly did not perform while on overtime. In his official Department interview, Respondent said that he had Compstat on that date and that he must have made a mistake on his overtime slip (DX 12) when he entered the reason for overtime. Decker testified that Compstat is an administrative function, for which overtime is not authorized. At his trial, Respondent testified that he did not understand the basis for Decker's testimony that overtime was not authorized for administrative functions such as

Compstat. Respondent testified, “[B]ut they wanted to see you at 6:00 in the morning for Compstat when we have to prepare for cases.” However, Respondent was unable to explain why he wrote Case 2213 as the basis for his overtime, when in fact, he spent the overtime preparing for Compstat. Respondent did not recall whether Case 2213 was discussed at the Compstat meeting. Based on the foregoing, I find that the Department proved that Respondent made a false entry in the Department records on December 2, 2011, and I find Respondent Guilty.

With respect to December 8, 2011, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 9:00 a.m.) and post-tour (6:05 p.m. to 7:35 p.m.) overtime for working on Case 2189, work which he allegedly did not perform. The Department presented Respondent’s cell phone invoice (DX 13A) which the Department claimed showed that he made a call from

[REDACTED] New York, his location of residence, at 7:23 p.m. A reverse audit of ECMS showed that Respondent never accessed Case 2189 on that date. In addition, Decker testified that the detective who was assigned the case worked a 10:00 a.m. to 6:00 p.m. tour that day.

Respondent testified that at 4:30 p.m. on December 8, 2011, he received notification to report to the Medical Division in Queens for a drug test. He left the precinct an hour later and did not end of tour until 7:35 p.m. Respondent wrote Case 2189 on his overtime slip and did not write the drug test or any of the other cases on which he worked that date. There was no specific reason why he chose Case 2189 on his overtime slip; he explained that it was “normal practice to put a case number down.” Respondent also testified that although he did not recall specifically what he did while on overtime on

December 8, 2011, he most likely pulled the folder for Case 2189 off Burchette's desk that day.

Based on the foregoing, I find the Department proved by a preponderance of credible evidence that Respondent made a false entry in Department records on December 8, 2011, with respect to his overtime slip, and I find Respondent Guilty as charged.

With respect to December 14, 2011, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 9:30 a.m.) and post-tour (6:05 p.m. to 7:35 p.m.) overtime for work on Case 2259 which he allegedly did not perform. Decker testified that a reverse audit of ECMS showed that Respondent never accessed Case 2259 on that date, and the detective who was assigned the case worked from 10:00 a.m. on December 14, 2011, to 1:00 a.m. on December 15, 2011. However, the Department failed to present into evidence Respondent's overtime slip with respect to this date or any other credible, corroborating evidence.

Based on the foregoing, the Department failed to prove by a preponderance of the credible evidence that Respondent made a false entry in the Department records on December 14, 2011, and I find Respondent Not Guilty.

With respect to December 15, 2011, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 9:30 a.m.) and post-tour (6:05 p.m. to 7:35 p.m.) overtime for work on Pattern 114. Decker testified that in reviewing Respondent's cell phone invoice (DX 14A), he determined that Respondent made a call from Elmhurst, New York, at 8:01 a.m. A reverse audit of ECMS showed that Respondent accessed Pattern 114 at 8:56 a.m.

Respondent signed in the Command Log at 8:00 a.m. He testified that he was working in the precinct at 8:01 a.m., and that he received a phone call from his wife. He also testified that on December 15, 2011, he supervised lineups, which did not require him to be logged onto ECMS. He testified that he traveled to One Police Plaza for a meeting about Pattern 114. Respondent testified that he wrote Pattern 114 on his overtime slip and not the lineups because it was not normal practice to write administrative duties such as lineups on overtime slips.

Based on the foregoing, I find that the Department did not prove that Respondent made a false entry in Department records on December 15, 2011, and I find Respondent Not Guilty.

With respect to January 3, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work on Case 2217 that he allegedly did not perform. According to Decker, Respondent's cell phone invoice (DX 15A) noted that he made a call from Long Island at 8:06 a.m. In addition, Decker testified that a reverse audit of ECMS showed that Respondent never accessed Case 2217 on January 3, 2012. Decker did not know if the detective who was assigned the case was present in the command while Respondent was on overtime.

Respondent signed in the Command Log at 8:00 a.m. He testified that his wife called him at 8:06 a.m., presumably from her doctor's office in Long Island. When asked why he did not log onto ECMS while on overtime, he testified that he did not log onto the system upon his arrival at work.

Based on the foregoing, I find that the Department proved that Respondent made a false entry in Department records on January 3, 2012, with respect to his overtime slip, and I find Respondent Guilty.

With respect to January 4, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work on Case 2432 that he allegedly did not perform while on overtime. Decker testified that a reverse audit showed that Respondent accessed Case 2432 while on straight time at 6:22 p.m. Given Respondent's testimony regarding his numerous duties, responsibilities and habits as Commanding Officer and his habit of logging onto ECMS at least once a day, I find the fact that on January 4, 2012, he did access ECMS regarding Case 2432 sufficient evidence that he worked on Case 2432 during his overtime, and I find Respondent Not Guilty.

With respect to January 6, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work on Case 35 that he allegedly did not perform. Decker testified that the complaint for Case 35 was not even reported until 12:30 p.m. During his official Department interview, Respondent could not provide an explanation for this discrepancy. At trial, Respondent testified, "No, I cannot explain that. I might have made a mistake the way Sergeant Decker made a mistake. It's just a lot of work." The Department did not present into evidence Respondent's overtime slip with respect to this date.

Based on the foregoing, I find the Department proved the charge that Respondent made a false entry on his overtime slip on January 6, 2012, and I find Respondent Guilty.

With respect to January 13, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work on Case 27 that he allegedly did not perform. The Department presented evidence that Respondent's cell phone invoice (DX 16A) showed that he was in Maspeth, New York, at 8:10 a.m. Decker testified that a reverse audit of ECMS showed that Case 27 was never accessed by Respondent on that date. During his official Department interview, Respondent could not provide an explanation for the discrepancy.

Based on the foregoing, I find that Respondent made a false entry in the Department records on January 13, 2012, with respect to his overtime slip, and I find Respondent Guilty.

With respect to January 20, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work on Case 2367 that he allegedly did not perform while on overtime. Decker testified that Respondent accessed Case 2367 while on straight time at 5:41 p.m. The detective who was assigned to Case 2367 was off work that day. Given Respondent's testimony regarding his numerous duties, responsibilities and habits as Commanding Officer, his habit of logging onto ECMS at least once a day, and his habit of looking at cases even if the detective were not present, I find the fact that he did access ECMS regarding Case 2367 on January 20, 2012, sufficient evidence that he worked on Case 2367 during his overtime, and I find Respondent Not Guilty.

With respect to January 24, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work on Case 144 that he allegedly did not perform while on overtime. A

reverse audit of ECMS showed that Respondent accessed Case 144 while on straight time at 5:54 p.m. The detective who was assigned the case started work at 1:00 p.m. on that date.

Respondent admitted that he left his command without permission on January 24, 2012, during straight time to go home and check on his pregnant wife. He has been found guilty of the charge of being absent from his assignment on January 24, 2012, without permission or police necessity (see Specification No. 1). The Department did not charge Respondent with misusing his overtime but with making a false entry in the Department records for not working on Case 144 while on overtime. However, given Respondent's numerous responsibilities as a Commanding Officer and his supervision of the caseloads of the detectives in his squad, including reviewing the hardcopy of case folders, and given the fact that he did log onto ECMS on January 24, 2012, regarding Case 144, I find Respondent Not Guilty as charged.

With respect to January 27, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for Case 140, work which he allegedly did not actually perform while on overtime. A reverse audit of ECMS showed that Respondent accessed Case 140 while on straight time at 6:25 p.m. The detective who was assigned to Case 140 started worked at 11:30 a.m. that day.

A review of the Vehicle Utilization Log (DX 18) revealed that Respondent left his command on January 27, 2012, to be in the vicinity of the 68 Precinct at 1:00 pm and returned at 2:35 p.m. Respondent did not note the trip in the Movement Log or his

Activity Log. According to Decker, he found no reason for Respondent to have left his command.

Given Respondent's testimony regarding his numerous duties, responsibilities and habits as Commanding Officer, his habit of logging onto ECMS at least once a day, and his habit of looking at cases even if the detective were not present, I find the fact that he did access ECMS regarding Case 140 on January 27, 2012, sufficient evidence that he worked on Case 140 during his overtime, and I find Respondent Not Guilty.

With respect to February 1, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work on Case 145 that he allegedly did not perform. The Department presented evidence, through a Vehicle Utilization Log (DX 20), that Respondent left his command to go to 61 Street and 5 Avenue at 9:00 a.m. and returned at 4:30 p.m. Respondent did not note the trip in the Movement Log or his Activity Log, and has been found Guilty of leaving his precinct without permission or police necessity on February 1, 2012 (see Specification No. 1).

In addition, a reverse audit showed that Respondent never accessed Case 145 on February 1, 2012, and the detective who was assigned the case was off work that day. Given the foregoing, the Department proved the charge that Respondent made a false entry in the Department records on February 1, 2012, with respect to his overtime slip, and I find Respondent Guilty.

With respect to February 2, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work that he allegedly did not perform. The Department introduced

Respondent's cell phone invoice (DX 21) that the Department claimed showed him making a phone call from Rego Park, New York at 7:56 a.m. A review of the Vehicle Utilization Log (DX 20) revealed that Respondent left his command to go the vicinity of the 68 Precinct at 2:00 p.m. and returned at 4:30 p.m. Respondent did not note his trip in the Movement Log or his Activity Log. During his official Department interview, Respondent could not provide an explanation as to why he left his command that day.

As discussed above, the cell phone invoice is insufficient evidence to show that Respondent was not present in the precinct at 8:00 a.m. Furthermore, with this specification, Respondent is not charged with leaving his precinct without permission or police necessity. The Department charged Respondent with making a false Department record by not performing work during overtime. The Department failed to present Respondent's overtime slip, and there was no other credible, corroborating evidence. Given the lack of sufficient evidence to show that Respondent failed to perform work during his overtime, I find Respondent Not Guilty.

With respect to February 9, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (7:30 a.m. to 10:30 a.m.) and post-tour (7:05 p.m. to 8:05 p.m.) overtime for work on Case 246 that he allegedly did not perform. Decker testified that a reverse audit of ECMS showed that Respondent never accessed Case 246 that day. Furthermore, the detective who was assigned the case started work at 12:00 p.m. that day. However, the Department failed to present into evidence Respondent's actual overtime slip with respect to this date, and there was no other credible, corroborating evidence.

Given the foregoing, the Department failed to prove by a preponderance of the credible evidence that Respondent made a false entry in the Department records on February 9, 2012, and I find Respondent Not Guilty.

With respect to February 10, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) overtime for work on Case 246 that he did not perform while on overtime. A reverse audit determined that Respondent accessed Case 246 through ECMS during straight time at 5:47 p.m. Respondent has been found guilty of leaving his precinct on this date without permission or police necessity, and for personal reasons (see Specification No. 1). The Department did not charge Respondent with misusing his overtime but with making a false entry in the Department records for not working on Case 246 while on overtime. However, given Respondent's numerous responsibilities as a Commanding Officer and his supervision of the caseloads of the detectives in his squad, including reviewing the hardcopy of case folders, and given the fact that he did log onto ECMS on February 10, 2012, regarding Case 246, I find Respondent Not Guilty as charged.

With respect to February 15, 2012, the Department charged Respondent with making a false entry in the Department records by claiming pre-tour (8:00 a.m. to 10:30 a.m.) and post-tour (7:05 p.m. to 8:35 p.m.) overtime for work on Case 244 that he allegedly did not perform. Decker testified that a reverse audit showed that Respondent never accessed Case 244 on that date and the detective who was assigned the case started work at 1:34 p.m. on February 15, 2012. However, the Department failed to present into evidence Respondent's overtime slip with respect to this date, and there was no other credible, corroborating evidence.

Given the foregoing, the Department failed to prove by a preponderance of the credible evidence that Respondent made a false entry in the Department records on February 15, 2012, and I find Respondent Not Guilty.

With respect to February 22, 2012, the Department charged Respondent with making a false entry in the Department records by claiming overtime for work on Case 299 that he allegedly did not perform. Decker testified that a reverse audit of ECMS showed Respondent never accessed Case 299 on that date and the detective who was assigned to the case started work at 8:00 a.m. during Respondent's overtime period. However, the Department failed to present into evidence Respondent's overtime slip with respect to this date, and there was no other credible, corroborating evidence.

Given the foregoing, the Department failed to prove by a preponderance of the credible evidence that Respondent made a false entry in the Department records on February 22, 2012, and I find Respondent Not Guilty.

Specification No. 3

It is charged that Respondent, while assigned to the 72 Precinct Detective Squad, on eleven (11) occasions, on or about and between the dates indicated in Specification No. 2, while on-duty, failed to make entries in his Department-issued memo book relative to his location, movement and vehicle usage.

Respondent admitted to this specification at trial and testified that he accepted responsibility for said specification, his "memo book specification." To the question, "Specification number 3 in this case charges that while on duty on or about September 7, 2011 through February 22, 2012, you failed to make entries into your Department issued memo book while attending to your location movements in the vehicle.... Would it be

correct to say that you're accepting responsibility for that specification?", Respondent answered, "Yes."

Based on the foregoing, I find Respondent Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY2d 222 (1974). Respondent was appointed to the Department on October 15, 1990. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate recommended that the penalty to be imposed on Respondent consist of the forfeiture of forty (40) vacation days plus one (1) year dismissal probation plus the adjustment of time, leave and pay balances in the amount of 61 hours and 40 minutes for overtime allegedly wrongfully incurred and the deduction of that cash value in the amount of five thousand two hundred twenty-nine dollars and one cent (\$5,229.01). In that the Department previously deducted \$5,229.01 from Respondent's paycheck as a result of these charges, the Assistant Department Advocate recommended that the deduction be upheld. It must be noted, however, that adjustment of a Respondent's time and leave balance as well as deduction of pay improperly paid, are not authorized penalties that this Court can impose under the Administrative Code. They can be part of a plea agreement or dealt with administratively by the Department, but they are beyond the scope of this Report and Recommendation.

The Assistant Department Advocate's recommendation for penalty was predicated on Respondent being found guilty of all charges, which he has not been. On Specification

No. 1, Respondent was found guilty of being absent from his assignment without permission or police necessity on three of the five dates charged. On Specification No. 2, Respondent was found guilty of making false entries in Department records on 8 of the 27 dates charged, when he indicated on his overtime slips that he performed work on specific cases which he did not perform. On Specification No. 3, Respondent admitted guilt to Activity Log deficiencies on 11 occasions.

In reviewing penalties imposed on similarly situated Respondents in disciplinary cases involving misuse and/or abuse of time, several factors were at play. These factors included the rank, length of service and evaluations of Respondent, any prior disciplinary record, and the number of occasions/dates of misuse and/or abuse of time. Mitigating and aggravating factors were also considered.

In a case similar to the instant one, Disciplinary Case No. 83773/08 (April 27, 2010), a 25-year lieutenant with one prior adjudication forfeited 15 vacation days for making false entries in Department records on 21 occasions over an 18-month period as to the time he actually arrived at work, being late for scheduled tour of duty on 21 occasions, and failing to submit Leave of Absence Reports for the unauthorized lateness.

However, in more serious cases than the instant one, such as Disciplinary Case Nos. 85617/09, 84717/08 and 85787/09, harsher penalties were imposed. In Disciplinary Case No. 85617/09 (April 20, 2010), a 22-year sergeant with one prior disciplinary record negotiated a penalty of 45 vacation days, one year dismissal probation and had his time/leave adjusted to reflect a subtraction of 323 hours and 20 minutes for unauthorized off-duty employment, failure to maintain his Activity Log, failure to submit a Leave of Absence Report, for 31 days that he did not report to work, and 31 days and 75 hours and

20 minutes for lost time. Similarly, in Disciplinary Case Nos. 84717/08 and 85787/09 (October 13, 2010), a 23-year detective with no prior disciplinary record negotiated a penalty of 45 vacation days, was placed on one year dismissal probation, and had 79 hours and 15 minutes deducted from his time/leave balance for beginning his tour late and/or leaving early without authorization on 80 occasions, failing to indicate his return to the command in the Movement Log on 75 occasions, failing to sign in present for duty on 62 occasions, failing to sign out to a destination in the Movement Log on 21 occasions, and causing false entries to be made in the Department records by wrongfully telling his borough commander that he had no disciplinary action or sick record within the prior two years when he was applying for permission to work off-duty.

Here, Respondent, a 23-year lieutenant who was the Commanding Officer of the 72 Precinct Detective Squad, was found Guilty, over a seven-month period, of being absent from his assignment without permission or police necessity on three dates; of making false entries in the Department records on 8 dates; and of Activity Log deficiencies on 11 occasions.

Mitigating factors here included Respondent's performance as the Commanding Officer of a squad that was not only the busiest command in the zone but also had the best clearance percentage in the zone, as well as the fact that the seven-month period in question where the misconduct occurred was a time when Respondent's wife was experiencing a high-risk pregnancy and was bed-ridden. It also did not escape the Court's attention that some of the deficiencies in Respondent's paperwork were similar to the deficiencies in the Department's own exhibits, namely DX 1 and DX 1A. A proper and thorough investigation of a Commanding Officer of a detective squad was warranted.

Finally, since June 2012, Respondent has been on modified duty status, presently assigned to Housing Bureau Viper 8.

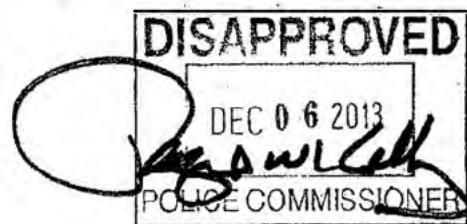
Aggravating factors included Respondent's two prior formal disciplinary cases, and the fact that as Commanding Officer, Respondent was responsible for setting the proper behavior and conduct for his command and subordinates. By engaging in any type of misconduct, Respondent has set an improper tone for his command.

Based on the foregoing, this Court recommends that Respondent forfeit 30 vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT JOSE VEGA
TAX REGISTRY NO. 898701
DISCIPLINARY CASE NO. 2012-7603

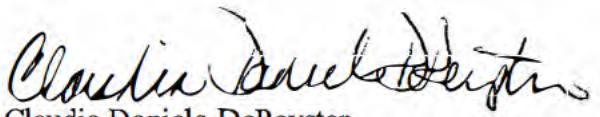
In 2009 and 2010, Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluations. In 2011, he received a rating of 4.5 "Above Highly Competent." Respondent has received seven Excellent Police Duty Medals, seven Meritorious Police Duty Medals and one Commendation in his career to date.

[REDACTED]

[REDACTED]

In 2004, Respondent was found Guilty, after a Department trial, with failure to request the response of a patrol supervisor and forfeited ten vacation days. In 2006, Respondent pleaded Guilty to obtaining insurance on his personal vehicle in Suffolk County when he resided in Kings County and accepted a penalty of the forfeiture of nine vacation days.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials